

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 02-21**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Application of the Tennessee sales and use tax to the appearance-reconditioning of automobiles.

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

Company X is a Delaware corporation qualified to do business in Tennessee. Company X operates a wholesale auto auction in Tennessee. Auto dealers use the services of Company X to sell pre-owned autos to other auto dealers, who in turn ultimately sell the autos at retail. Company X facilitates the wholesale sales between dealers in exchange for a fee. Company X also processes the autos for resale by appearance-reconditioning the auctioned autos for those dealers who elect to have such processing performed by Company X. The auto dealers provide Company X with a resale certificate for all autos processed by Company X. All of the autos are processed by Company X for resale through its wholesale auto auction. Company X guarantees the automotive reconditioning for six months.

The appearance-reconditioning of an auto is a multi-step procedure including the following:

- Exterior is machine buffed to remove dead color pigments.
- Exterior is machine buffed and cleaned to remove acid rain residue and other pollutants.
- Exterior is covered with a protective silicone covering.
- Stained carpeting is machine cleaned with a retractor system and carpet dye is applied.

- Wheel wells are painted.
- Wheels are treated to remove road paint and pollutants.
- A protective finish is applied to the tires.

The appearance-reconditioning process increases the wholesale value of the auto. The cost of the automotive reconditioning process contributes to the wholesale value of the auto and is not separately stated on the wholesale invoice of the auto. The retail sale of the autos occurs at the dealers' locations and does not occur on the premises of Company X. The retail sale of the autos generally occurs within 45 days of the date of wholesale.

Company X sub-contracts with Company Z, an unrelated company, to perform the appearance-reconditioning process on the premises of Company X. Company X issues a blanket resale certificate to Company Z for the appearance-reconditioning process.¹

QUESTIONS

1. Are the appearance-reconditioning charges made by Company X and Company Z exempt from sales tax as fabricating or processing tangible personal property for resale?
2. Are the supplies and materials used by Company Z in the appearance-reconditioning process subject to sales or use tax?

RULINGS

1. No. The automobile appearance-reconditioning charges by Company X and Company Z are charges for repair services and are not exempt from sales tax.
2. Supplies and materials that accompany the work performed by Company X and Company Z - such as silicone coatings, paint, dyes and protective coatings - are not subject to tax. However, supplies and materials that do not accompany the work performed by these companies - such as supplies or materials used in the buffing or cleaning of vehicles or in the removal of residues, road paint and pollutants - are subject to tax.

ANALYSIS

1.
THE APPEARANCE-RECONDITIONING CHARGES BY COMPANY X AND COMPANY
Z ARE REPAIR SERVICES AND ARE NOT EXEMPT FROM
THE SALES TAX.

¹ Company X and Company Z should both be forewarned that Company Z's issuance of a blanket resale certificate under the facts given is not in accordance with applicable Tennessee law. (See Footnote 3.)

Tennessee law provides that it is a taxable privilege to engage in the business of selling tangible personal property at retail in this state. Tenn. Code Ann. Section 67-6-201(1). A retail sale of property is specifically defined to include the performing for a consideration of any repair services with respect to any kind of tangible personal property. Tenn. Code Ann. Section 67-6-102(24)(F)(iv).

The Department of Revenue has further clarified the application of Tenn. Code Ann. Section 67-6-102(24)(F)(iv) relative to repair services by adoption of Sales and Use Tax Rule 54, which states, in applicable part, as follows:

- (1) *All charges for repair services and repairs of any kind of tangible personal property, such as automobiles, clothing, watches and jewelry, office equipment, machinery, tires, etc., including all parts and/or labor, are subject to the Sales and Use Tax . . .*
- (2) For the purposes of this rule, “repair services” and “repairs” of tangible personal property shall mean and *include any one or all of the following* for a user and consumer: *work done to preserve or restore to or near the original condition made necessary by wear, normal use, wastage, injury, decay, partial destruction, or dilapidation; the mending, correction, or adjustment made for any defect or defective portion, alterations; refinishing; maintenance, preventive maintenance, or warranty contracts; any cleaning that is a necessary part of any repair work; “service calls” where any repair work is done or contemplated; and changes in the size, shape or content . . .*

TENN. COMP. R. & REGS. 1320-5-1-.54(1) (Emphasis added.)²

The Department has interpreted the types of appearance-reconditioning services to automobiles performed by Company X and Company Z to be repair services or repairs within the meaning of both Tenn. Code Ann. Section 67-6-102(24)(F)(iv) and Rule 54, and therefore, that they are subject to the sales tax.

That interpretation is reasonable considering the following dictionary definition that has been published for the word “repair”:

1. To restore to sound condition after damage or injury; fix.
2. To set right; remedy: *repair an error*.
3. To renew or refresh.
4. To make up for or compensate for (a loss or wrong, for example).

THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1102 (New College Edition, 1976). (Emphasis by author.)

² See also TENN. COMP. R. & REGS. 1320-5-1-.05(1), which provides that “(c)harges made by automobile refinishers and painters for refinishing and painting automobiles are subject to the Sales Tax.”

Such interpretation is also consistent with the position of the Tennessee courts.

In LeTourneau Sales and Serv., Inc. v. Olsen, 691 S.W. 2d 531 (Tenn. 1985), the Tennessee Supreme Court determined that a company that rebuilt engines for its customers was making taxable repairs. In support of its claim that it was remanufacturing, the taxpayer in that case demonstrated that the rebuilt engines were superior to the ones originally sent in by the customer and were returned to the customer with a new one-year warranty. The Court nonetheless upheld the assessment on repairs, asserting that there “is no indication of any ‘degree’ of repair in [the statute] or in any of the rules interpreting that section.” *Id.* at 534. The Court concluded, therefore, that “the extent to which customers’ motors are repaired is not a relevant consideration.” *Id.*

Even though the Court acknowledged that the completed motor the taxpayer delivered to its customer was “very different” from the product put in the taxpayer’s hands for work to be performed, the Court found that to be inconsequential as far as the tax on repair services was concerned. *Id.*

It seems clear that the Court in LeTourneau, had it been presented with the facts here, would have had even less difficulty finding Company X and Company Z to be performing repair services under the law. The automobile appearance-reconditioning services of Company X and Company Z closely resemble LeTourneau’s engine rebuilding services but seem to be even more exemplary of repair services under applicable provisions of law.

Therefore, the charges for automobile appearance-reconditioning made by Company X and Company Z are repair services pursuant to Tenn. Code Ann. Section 67-6-102(24)(F)(iv) and are subject to the sales tax.³

It should also be observed that many of the “steps” in the multi-step appearance-reconditioning procedures performed by, or on behalf of, Company X and Company Z are simply automobile detailing services. Such steps would thus be considered taxable retail sales pursuant to Tenn. Code Ann. Section 67-6-102(24)(F)(v) since they constitute cleaning of tangible personal property.

2.

ONLY SUPPLIES AND MATERIALS USED BY COMPANY X AND COMPANY Z IN THE APPEARANCE-RECONDITIONING PROCESS THAT ACTUALLY

³ The Taxpayer has suggested that these charges are exempt from the sales tax as fabricating or processing tangible personal property for resale pursuant to Tenn. Code Ann. Section 67-6-102(8). However, it has already been concluded that these charges fall expressly within the taxing provisions of the statute.

Additionally, exemptions from taxation must be construed strictly against the taxpayer and in favor of the taxing authority. Tennessee Com. Whse., Inc. v. Woods, 603 S.W.2d 130 (Tenn. 1980).

Finally, since exemptions from taxation must positively appear and will not be implied (Weaver v. Woods, 594 S.W. 2d 693 (Tenn. 1980); Morton Pharmaceuticals, Inc. v. MacFarland, 368 S.W.2d 756 (1963)), the sale for resale exemption is not applicable here.

ACCOMPANY THE WORK DONE BY EACH FOR THEIR RESPECTIVE
CUSTOMERS ARE NOT SUBJECT TO SALES AND USE TAX.

TENN. COMP. R. & REGS. 1320-5-1-.05(2) provides as follows:

Automobile refinishers and painters may buy the materials which actually accompany the work done for their customers without the payment of Sales and Use Tax. Items which are used by the refinishers and painters, but which do not accompany the work done for the customers, are subject to Sales or Use Tax.

This rule requires automobile refinishers and painters to pay tax on materials they purchase unless the materials actually accompany the work done for their customers.

Since silicone coatings, dyes, paints and protective coatings each constitute materials that will actually accompany the work done by Company X and Company Z in reconditioning automobiles when the automobiles are delivered to the purchaser of the appearance-reconditioning services, these materials would not be subject to the sales tax.

However, any supplies or materials used in the buffing or cleaning of vehicles or in the removal of residues, road paint and pollutants would not accompany the work performed by Company X or Company Z and would therefore be subject to the sales tax.

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APPROVED: Ruth E. Johnson
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DATE: 6/13/02